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No. 383

In the Supreme Court of the United States

OCTOBER TERM, 1962

EDWARD CARLTON CRUTCHER AND ALFRED SANABRIA,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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JURISDICTION

The judgment of the court of appeals was entered on July 23, 1962 (II R. 322). On August 21, 1962,

[1] "II R." designates the government's appendix in the court of appeals which contains excerpts from the trial testimony and to which have been added the proceedings in the court below. "I R." refers to the separately paginated "Appendix to Appellants' Briefs" in the court of appeals containing, *inter alia*, the indictment and the trial court's instructions. Also on file with the Clerk of this Court is the complete trial transcript, which, when referred to herein, is designated "Tr."

Mr. Justice Harlan extended the time for the filing of a petition for a writ of certiorari to and including August 29, 1962, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES AND RULES INVOLVED

The pertinent statutes and rules are 18 U.S.C. 2(a) and 495, and Rules 8 and 14 of the Federal Rules of Criminal Procedure. They are printed in the appendix, *infra*, pp. 17–18.

QUESTIONS PRESENTED

1. Whether the number and nature of counts in the indictment and the joinder of offenses and parties fatally prejudiced petitioners, where the charges against them which were submitted to the jury consisted of a limited number of the substantive counts, as to which the evidence was compartmentalized in the government's case and segregated in the trial court's charge.

2. Whether the evidence supported petitioners' convictions as aiders and abettors in the forging of endorsements on government bonds and the uttering of such bonds.

STATEMENT

Following a jury trial in the United States District Court for the Southern District of New York, petitioners were convicted on 18 counts charging that they aided and abetted the forging of endorsements on nine Series E United States Saving Bonds and the uttering of these forged instruments in violation of 18 U.S.C. 495 (Appendix, *infra*, pp. 17–18). (Tr. 1203–1204). Each petitioner was sentenced to imprison-

ment for eight years on each of the 18 counts, the sentences to run concurrently (Tr. 1233–1234, 1253–1254; Pet. App. 12–15). The court of appeals unanimously affirmed the convictions (Pet. App. 2–10).

Because petitioners complain about the length of the indictment and the joinder of defendants and offenses, we describe the scope and theory of the indictment and the pre-trial and trial proceedings relating thereto before turning to a discussion of the evidence.

I. THE INDICTMENT AND THE DISMISSAL OF COUNTS

1. The indictment, in 538 counts, charged the forging and uttering of forged endorsements on each of 269 Series E United States Savings Bonds and, in two counts (539–540), conspiracies to commit these substantive offenses (I R. 9–63). Each of the 269 bonds was the subject of two separate substantive counts—one charging forgery and the other uttering of the forged instrument. In substantive counts 1–334 petitioners were charged with aiding and abetting Levine, a co-defendant charged with forging and uttering the bonds.[2] Donatiello was also named as aider and abettor in counts 1–324, and Parks was named as an additional principal in counts 313–334. The remaining substantive counts charged bond cashings involving Donatiello, Anthony Campisi and

[2] These counts of the indictment charged the petitioners with forging and uttering the bonds (18 U.S.C. 495) as well as aiding and abetting the commission of that crime (18 U.S.C. 2), (see Appendix, *infra*, pp. 17–18). Subsequently, the government filed a bill of particulars which stated that petitioners were charged in the substantive counts only as aiders and abettors (I R. 64a).

Thomas Bartkovsky (I R. 38–57, 64).[3] Count 539 charged a conspiracy among petitioners, Donatiello, Levine and Parks to forge and utter Series E Bonds (I R. 57–60), and count 540 charged a like scheme among Donatiello, Bartkovsky and Campisi (I R. 61–63).

2. On the morning set for the commencement of the trial (January 2, 1962) and before the jury was impanelled, petitioners moved for severance, asserting that they would suffer prejudice at trial because of the length of the indictment and the joinder of counts in which petitioners were not named (II R. 2–4; see also II R. 9–10). In making this motion counsel for petitioner Sanantonio acknowledged, however, that the court would be "perfectly justified" in denying it as not timely filed (II R. 2–3). The Assistant United States Attorney, in opposition, noted the untimeliness of the motion (II R. 4),[4] and further argued that the joinder was permissible because "at least in one important instance, the same bonds, and the same burglary, appear in the hands of both sets of conspirators" (II R. 4–5),[5] that "[m]any of the acts are simi-

[3] Donatiello was named in counts 335–404, Campisi in counts 405–538 and Bartkovsky in counts 335–538. On October 19, 1962, Campisi filed a petition for a writ of certiorari. The government is presently preparing a response thereto.

[4] Not guilty pleas had been entered in November 1961 and the district court had set December 4, 1961, as the date for pretrial motions. On this date, however, no motions were made relating to the length of the indictment or the joinder of counts and no extension of time to make such motions was sought or granted. (See Pet. App. 8).

[5] He had reference to the bonds stolen from Dr. Sam Fankuchen. All of the defendants on trial except Campisi were

lar acts with respect to bonds," and that if a severance were granted "it would necessitate trying large parts of the same case twice" (II R. 5). Although the trial judge expressed his displeasure at the length of the indictment (II R. 4, 9), he denied the motion as untimely filed (II R. 5). He further observed that he was going to do everything to keep matters "clear" (II R. 9).

3. The case went to trial with four defendants (petitioners, Donatiello and Campisi) since Levine, Parks and Bartkovsky entered pleas of guilty (Tr. 19–21, 22–24, 24–26). At the close of the government's case both conspiracy counts were dismissed by the court in order to simplify the issues for the jury (II R. 230–240). A number of substantive counts were also dismissed (II R. 238). As a result, the charges against petitioners were reduced to eighteen substantive counts relating only to bonds stolen from a Dr. Sam Fankuchen.[6] As noted, *supra*, p. 2, petitioners were convicted by the jury on each of these counts.[7]

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charged in different substantive counts with aiding and abetting the forging and uttering of some of these bonds. Compare counts 153 through 156 (I R. 9, 29) with counts 358 through 362 (I R. 38, 42–43).

[6] Counts 153–156, 309–312, 325–334. Thirty-four substantive counts were submitted to the jury as to Campisi (counts 455–471, 522–538) and 332 as to Donatiello (counts 1–324, 335–338, 370–373).

[7] Donatiello and Campisi were also convicted on all the counts submitted to the jury against them (Tr. 1203–1204). Donatiello was sentenced to a concurrent nine year prison sentence on each count (Tr. 1260), and Campisi was sentenced to a concurrent eight year sentence on each count (Tr. 1231–1232).

II. THE EVIDENCE

1. The evidence at the trial showed that large quantities of stolen United States Series E Bonds were illegally cashed between May 1960 and January 1961.

In April or May 1960, Herbert Levine joined with "Blotchie" Donatiello in a bond-passing operation (II R. 64–69). According to Levine, the procedure which was agreed upon and thereafter followed was for him to meet with Donatiello who would give him Series E Bonds to be passed and also a blank New York State driver's license with a forged validating stamp. Levine would insert his own physical description on the license and sign the name of the registered owner of the bonds to be passed that day. The two men would then usually drive to a small town outside of New York City and select a local address which would also be entered on the license. Levine would then enter a local bank, forge the registered owner's name on the bonds and present them for payment. If necessary he would use the forged driver's license as identification. He received twenty-five per cent of the profits from the cashed bonds, giving the remainder to Donatiello (II R. 62–64, 68–71, 74–77, 83–84).[8] In July 1960, Levine brought Meyer Parks into the operation as a bond-passer. Parks also received a percentage of the profits from the bonds he successfully cashed (II R. 80–86, 126–135).

[8] During the summer of 1960, Levine, using the above described procedure, cashed numerous bonds belonging to some four individuals (II R. 63, 72–73). These owners testified that these bonds had been stolen from them; that they had never signed nor endorsed them; and that they had never authorized any one to endorse or cash the bonds for them (II R. 13–19; 26–30; 31–35; 35–39).

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[8] During the summer of 1960, Levine, using the above-described procedure, cashed numerous bonds belonging to some four individuals (II R. 63, 72–73). These owners testified that these bonds had been stolen from them; that they had never signed nor endorsed them; and that they had never authorized any one to endorse or cash the bonds for them (II R. 13–19; 26–30; 31–35; 35–39).

2. At a point in the summer of 1960 when they "had no bonds to cash" (II R. 87, 135), Donatiello told Levine that he knew of a place where they might get some and took Levine to a flower shop in Brooklyn. At the shop, Levine met petitioner "Freddie" Sanantonio (II R. 87–91). No bonds were then obtained, although Donatiello informed Levine that he had been advised that they would be able to get some in the near future (II R. 92). Accompanied by Donatiello, Levine made a number of further visits to the flower shop where he also met petitioner "Eddie" Coppolla (II R. 92–93). During these visits all four men discussed the availability of bonds (II R. 93). On one of these visits, Coppolla stated that he had "verified the fact that they should have some bonds soon" (II R. 94).

Thereafter, at a meeting attended by all four at the flower shop at the end of October or in early November 1960, either Sanantonio or Coppolla stated that a large amount of bonds would be available "in a couple of days" (II R. 94–97). A few days later, Levine and Donatiello returned to the flower shop and were told that some bonds belonging to a doctor, in the amount of $83,000, would be available that day (II R. 97–98, 100). Following this conversation, the four men got into a car and drove off. They soon parked and Sanantonio left the car. He returned in about 15 minutes with an envelope containing bonds registered to Dr. Sam X. Fankuchen, in the amount of $20,000 or $40,000 (II R. 102) (Dr. Fankuchen testified that on October 28, 1960, $83,000 worth of his Series E Bonds had been stolen from his Brook-

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lyn home) (II R. 44–46, 55–56). Either Donatiello or Levine then gave money to the petitioners (II R. 102–103). The four men had previously discussed the cost of the bonds and it had been agreed that petitioners would get twenty-five or thirty per cent "of what the bonds would bring back" (II R. 105–106).

About two or three weeks later (late November 1960), the four met again, this time in Manhattan (II R. 106–107).[5] This time petitioners gave Levine and Donatiello approximately $20,000 worth of Fankuchen bonds and, in return, received either $1,700 or $2,700. This payment came from money which Levine and Donatiello had received from previous bond cashing (II R. 106–110). Thereafter, Levine met alone with Coppolla at this same location and received some more Fankuchen bonds in exchange for an additional payment (II R. 110). Some time afterward, Donatiello told Levine that the Fankuchen bonds were too difficult to cash and that he was going to return $23,000 worth (II R. 111). In late December 1960, or early January 1961, Levine had a conversation with Sanantonio, and it was agreed that he could purchase the $23,000 of Fankuchen bonds. By prearrangement Levine subsequently met with Coppolla in a wholesale meat market area in Brooklyn, and purchased these bonds (II R. 111–113).

Levine further testified that he received forged New York drivers' licenses used in cashing bonds from "Blotchie or Eddie" (II R. 115).

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[5] This meeting took place at 10 or 11 p.m. in an automobile parked at Third Avenue and 49th Street (II R. 107).

3. On November 14, 1960—some seventeen days after the theft of the Fankuchen bonds—three (in $1,000 denominations) were cashed by Parks, accompanied by Donatiello, in Middletown, New York (II R. 138–139; counts 325–327, 330–332). Two days later, Levine cashed four Fankuchen bonds (totalling $3,500) in Tarrytown, New York (II R. 59–62; counts 153–156; 309–312). Between January 23 and 25, Parks cashed two other Fankuchen bonds (in $1,000 denominations) in a bank in New York City (II R. 115–117, 118–119, 139; counts 328–329; 333–334).

Dr. Fankuchen, who had testified that his bonds had been stolen on October 28, 1960 (see *supra*), stated that he had not endorsed them or authorized anyone to sign his signature and cash them (II R. 57).

4. As to the defendants other than petitioners, the evidence showed that Bartkovsky at first worked together with Donatiello and Campisi, the latter two acting as partners in suppying him with bonds for the bond passing operation (II R. 178–187). Bartkovsky used the same bond-passing techniques as employed by Levine and Parks (II R. 181–182, 186). Some time in June 1960, Campisi and Donatiello broke up. Bartkovsky thereafter worked with each separately—primarily with Campisi but on occasion with Donatiello (II R. 187–188, 200–201). During this latter period both Campisi and Donatiello separately gave Bartkovsky stolen Fankuchen bonds to cash (II R. 203–205, 209–210).

III. THE TRIAL COURT'S INSTRUCTIONS

After instructing, *inter alia*, that the jury was the exclusive judge of the facts (I R. 162), that the government had the burden of establishing guilt beyond a reasonable doubt (I R. 163–164), and detailing the nature of the offenses charged in the indictment (I R. 165–166), the court observed that in order to convict any one of the defendants as an aider and abettor, the jury had to find that he wilfully associated himself "in some way with the criminal venture; and that he wilfully participate[d] or assist[ed] in it as in something he wishe[d] to bring about; and that he wilfully [sought] by some action of his to make it succeed" (I R. 166). The court, after noting that it was going to "discuss and consider each defendant separately" (I R. 165), then proceeded to marshal the evidence as to each defendant by the count (I R. 168–177), observing in this connection that petitioners were charged "with violation of law only in connection with bonds standing in the name of Dr. Fankuchen" (I R. 174). It then described the evidence adduced by the government on these transactions as they related to petitioners (I R. 175–176) and the other defendants (I R. 168–174; 176–177). The court further charged the jury that they were called upon "to determine the guilt or innocence of the different defendants under the different charges of the indictment" and that such guilt "must be determined individually" (I R. 164).

ARGUMENT

Stressing the length of the indictment, the joinder of defendants and offenses, and the ultimate dismissal

of the two conspiracy counts, petitioners allege that they were denied a fair trial. The facts are, however, that, so far as petitioners are concerned, only 18 counts relating to the forging and uttering of nine bonds stolen from one person were submitted to the jury; that the government, in presenting its case to the jury, separated the evidence relating to petitioners and their confederates (Donatiello, Levine and Parks) from the evidence dealing with parallel bond-cashing arrangements involving Donatiello, Campisi and Bartkovsky; that the trial judge gave instructions which segregated and pinpointed the evidence on the counts involving petitioners; and that the proof of petitioners' guilt was clear, direct and unequivocal.

So far as the alleged confusion is based on the mere length of the indictment, it is without merit. The indictment was long because each bond was the subject of two counts (one for forging and one for uttering) and many bonds were cashed, but there is nothing inherently complicated in the mere fact that a substantial number of bonds were involved.

Nor did the fact that two different groups of men were involved, necessitating two different conspiracy counts, require the conclusion that there should be a severance. The two conspiracy counts—one involving petitioners, Donatiello, Levine and Parks and the second Donatiello, Campisi and Bartkovsky—had one common defendant and charged parallel schemes, involving the same techniques and purposes and occurring generally during the same time period (I R. 57–63). Rule 8 of the Federal Rules of Criminal Procedure (Appendix, *infra*, p. 1a) allows for a

joinder of offenses of the "same or similar character" and of defendants "if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions * * *." As a preliminary matter, therefore, the joinder was proper. See *Schaffer* v. *United States*, 362 U.S. 511, 514. There was no reason why, on the basis of the indictment alone, the court should have severed the case against petitioners. Indeed, none of the petitioners made any pre-trial motions challenging the indictment or requesting severance until the morning set for the commencement of trial, more than a month after the date fixed by the district court for the making of such motions (II R. 2–10).

At the conclusion of the government's evidence, the trial judge decided that some simplification was desirable and dismissed the conspiracy counts. With respect to petitioners, only 18 counts pertaining to nine bonds taken from one person were submitted to the jury. There was no reasonable possibility of confusion. The evidence was developed at trial in a compartmentalized and easily separable fashion. The government's case, in essence, consisted of the testimony of the various bondholders who identified their stolen bonds and stated that they had never endorsed or cashed them or authorized any others to do so (see, *e.g.*, II R. 13–19; 26–30; 31–35; 35–39; 44–46; 55–57) and the testimony of Herbert Levine (II R. 62–115), Meyer Parks (II R. 126–143), and Thomas Bartkovsky (II R. 176–192, 200–206; 209–221, 223–226). Levine and Parks testified to their association with

Donatiello (commencing in the summer of 1960) in the bond-passing operation, listed the various bonds that they passed, and detailed the techniques they employed. Levine then described his various meetings with petitioners, starting in the summer of 1960 and culminating in the purchases from them of the Fankuchen bonds. Finally, Bartkovsky testified to the discrete bond-passing arrangement with Donatiello and Campisi and identified the bonds that were passed by this group (see Statement, *supra*, pp. 5–9). In short, the evidence implicating petitioners basically came from a single witness (Levine),[10] related to a single series of bonds, and encompassed a fairly limited period of time. Moreover, the trial judge in his instructions to the jury further segregated the proof, setting out separately by the count, the evidence as to each defendant (I R. 168–177), and advising the jury that "[t]he guilt or innocence of each defendant must be determined individually * * * on each count of the indictment which still remains" (I R. 164). In the circumstances, there is no reason to suppose that the jury failed to follow the trial court's admonition. Cf. *Delli Paoli* v. *United States*, 352 U.S. 232, 239; *Opper* v. *United States*, 348 U.S. 84, 94–95.

[10] Petitioners raise as a question (Pet. 3) but do not argue the claim that the court should have required corroboration of accomplice testimony. The rule in the federal courts has long been otherwise. *Caminetti* v. *United States*, 242 U.S. 470, 495. The trial judge instructed the jury that such testimony was to be "received with caution and weighed with great care" and that the jury should not convict "upon the unsupported testimony of an accomplice unless you believe the unsupported testimony beyond all reasonable doubt" (I R. 178).

Petitioners suggest, however, that inadmissible evidence must have been considered by the jury against them because, although both conspiracy counts were dismissed, all of the evidence relating to these counts remained in the case (Pet. 11–12, 14). Yet, at no time during trial or after dismissal of the conspiracy counts did petitioners seek relief from the joinder by a motion under Rule 14 of the Federal Rules of Criminal Procedure (Appendix, *infra*, p. 1b). Nor did they object to those portions of the charge in which the court marshalled the evidence as to each defendant. Cf. *Schaffer* v. *United States*, 362 U.S. 511, 516. Moreover, they make no showing of prejudice now. As for the evidence relating to the Campisi-Donatiello-Bartkovsky conspiracy, it was made clear both in manner of presentation and by express statement that such evidence, except to the extent that it might be independently admissible against petitioners, could not be considered against them (see, *e.g.*, II R. 161, 166, 171, 184, 192–194, 207–208, 229–230). As for evidence relating to the acts and statements of petitioners' alleged co-conspirators (Donatiello, Levine and Parks) in perpetrating the scheme to pass the stolen Fankuchen bonds, it is to be noted that much of it related to direct contacts and negotiations between Donatiello and Levine on the one hand and petitioners on the other (see Statement, *supra*, pp. 6–8). Such evidence was unquestionably admissible against petitioners. The evidence relating to the activities and statements of Donatiello, Levine and Parks outside the presence of petitioners in carrying

out the Fankuchen bond passing operation was equally admissible against petitioners on the substantive counts involving these bonds, without the aid of either of the conspiracy counts.[11] For the Fankuchen bond-passing scheme was plainly a joint-venture in which all five actively participated. Accordingly, the rules of evidence would have been the same—*i.e.*, the activities and statements of their joint-venturers in furtherance of this scheme would have been admissible against petitioners—even if no conspiracy had been charged. See *United States* v. *Pugliese*, 153 F. 2d 497, 500 (C.A. 2); *Fuentes* v. *United States*, 283 F. 2d 537, 539–540 (C.A. 9). In short, petitioners were accorded a fair trial and convicted on ample evidence, all of which was clearly admissible against them on the substantive counts alone.

2. There is no merit in the claim that the evidence failed to show that petitioners were aiders and abettors in the forging and uttering of the Fankuchen bonds. Even before the bonds were stolen petitioners discussed with Levine and Parks the availability of bonds. Petitioners could hardly have had any doubt

[11] On a number of occasions the statements made in these early dealings were limited to the utterer and held not to be binding on petitioners (see, *e.g.*, II R. 67, 69, 81–82). In any event, the evidence showed a concerted plan illegaly to cash stolen government obligations. That petitioners may have entered into this arrangement after it had commenced, or that Parks had no direct contact with petitioners, does not change the fact that they all had embarked and participated in the common scheme. See *Blumenthal* v. *United States*, 332 U.S. 539, 556–558; *United States* v. *Tramaglino*, 197 F. 2d 928, 930 (C.A. 2), certiorari denied, 344 U.S. 864; *United States* v. *Sansone*, 231 F. 2d 887, 893 (C.A. 2), certiorari denied, 351 U.S. 987.

even then about the purpose for which the bonds were sought (*i.e.*, to sell them), a purpose which necessarily involved forgery. Shortly after the theft,[12] petitioners on four separate occasions sold thousands of dollars worth of bonds at a price estimated at a percentage "of what the bonds would bring back" (II R. 105–106). The jury could reasonably conclude that petitioners knowingly entered into the business of supplying stolen bonds to be forged; that they were aware that their "business" would last only so long as the purchasers could successfully forge and utter the bonds and that their acts of selling were directed to this illegal end. Whatever may be the outer limits of liability under the aider and abettor doctrine as applied to one who merely sells an innocent object which he knows may be put to an illegal use, no such problem is involved in this case. The evidence here clearly and directly involved petitioners in the criminal conduct of which they were convicted. See *Direct Sales Co.* v. *United States*, 319 U.S. 703, 709–714; *United States* v. *Tramaglino*, 197 F. 2d 928, 930–931 (C.A. 2), certiorari denied, 344 U.S. 864; *United States* v. *Russo*, 284 F. 2d 539, 541 (C.A. 2); *United States* v. *Piampiano*, 271 F. 2d 273, 274–275 (C.A. 2). Petitioners made the venture their own under the strict standard of *United States* v. *Falcone*, 109 F. 2d 579, 581 (C.A. 2), affirmed, 311 U.S. 205; they meant "to further,

[12] Dr. Fankuchen testified that the theft occurred on October 28, 1960 (II R. 44–46, 55–56). Parks first cashed Fankuchen bonds on November 14, 1960 (II R. 138–139) and Levine on November 16, 1960 (II R. 59–62).

promote and coope[illegible] in it," under the rationale of *Direct Sales Co.* v. *United States*, 319 U.S. 703, 711.[13]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari be denied.

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[13] There is no merit to petitioners' contention, advanced in the statement of the Questions Presented (Pet. 2-3), that the court lacked jurisdiction of the aiding and abetting charges against petitioners because the transactions were not shown to have taken place in interstate commerce. Whatever the proof showed as to the interstate nature of the crimes, it was sufficient to afford jurisdiction of the charges of aiding and abetting the forging and uttering of United States Savings Bonds in violation of 18 U.S.C. 495, which is clearly a federal crime.

APPENDIX

18 U.S.C. 2 provides in pertinent part:

§ 2. PRINCIPALS.

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

* * * * *

18 U.S.C. 495 provides:

§ CONTRACTS, DEEDS, AND POWERS OF ATTORNEY.

Whoever falsely makes, alters, forges, or counterfeits any deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money; or

Whoever utters or publishes as true any such false, forged, altered, or counterfeited writing, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited; or

Whoever transmits to, or presents at any office or officer of the United States, any such writing in support of, or in relation to, any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited—

Shall be fined not more than $1,000 or imprisoned not more than ten years, or both.

Rule 8 of the Federal Rules of Criminal Procedure provides:

JOINDER OF OFFENSES AND OF DEFENDANTS

(a) Joinder of Offenses. Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Joinder of Defendants. Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

Rule 14 of the Federal Rules of Criminal Procedure provides:

RELIEF FROM PREJUDICIAL JOINDER

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires.

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